

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.	: 10/529,968	Confirmation No.	: 6272
First Named Inventor	: Christoph WEIS		
Filed	: August 08, 2003		
TC/A.U.	: 3752		
Examiner	: Steven M. Cernoch		
Docket No.	: 105433.62118US		
Title	: Plumbing Outlet Fitting		

PETITION TO WITHDRAW FINALITY UNDER 37 C.F.R. § 1.181

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully submit that the Office Action issued on April 12, 2011, was made final prematurely because it introduces a new grounds of rejection that was not necessitated by an amendment. Accordingly, the finality of this Office Action should be withdrawn.

Regarding the propriety of final rejections on a second or subsequent action on the merits, M.P.E.P. § 706.07(a) states that such actions:

shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

It is respectfully submitted that the new grounds of rejection in the final Office Action issued on April 12, 2011, was not necessitated by Applicants' amendment and was not based on information submitted in an Information Disclosure Statement filed during the period set forth in 37 C.F.R. § 1.97(c). Instead, it appears that the Examiner was persuaded by Applicants' arguments that the original rejections of the claims were not proper.

The Office Action issued on November 12, 2010, rejected claims 15, 16, 18-23, 25 and 27-42 for obviousness under 35 U.S.C. § 103(a) in view of the combination of U.S. Patent No. 4,534,514 to Aghnides et al. (“Aghnides”), U.S. Patent Application Publication No. 2002/0084353 to Griffin et al. (“Griffin”) and U.S. Patent No. 2,989,249 to Richter (“Richter”).¹

Applicants’ Reply filed on February 1, 2011, included only arguments and no claims were amended.

The final Office Action issued on April 12, 2011, withdrew the obviousness rejection based on the combination of Aghnides, Griffin and Richter and introduced the following new grounds of rejection:

1. Claims 15, 16, 18-23, 25, 27-29 and 31-42 for anticipation under 35 U.S.C. § 102(b) in view of Richter; and
2. Claim 30 for obviousness under 35 U.S.C. § 103(a) in view of Richter.

Because Applicants did not amend any claims, this new grounds of rejection could not have been necessitated by an amendment. Moreover, Richter was not filed as part of an Information Disclosure Statement filed during the period set forth in 37 C.F.R. § 1.97(c). Thus, this new grounds of rejection was not necessitated by Applicants’ amendment and is not based on information cited by the Applicants in an Information Disclosure Statement filed during the period set forth in 37 C.F.R. § 1.97(c), and it is respectfully submitted that the finality of this Office Action is improper and should be withdrawn.

It is believed that no fees are due for this petition. If necessary to effect a timely response, this paper should be considered as a petition for an Extension of

¹ Although the header of the rejection only references Aghnides and Griffin, from the body of the rejection it is clear that the rejection relies on the combination of Aghnides, Griffin and Richter.

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Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323, Docket No. 105433.62118US.

April 18, 2011

Respectfully submitted,

/Stephen W. Palan, Reg. No. 43,420/
Stephen W. Palan
Registration No. 43,420

CROWELL & MORING LLP
P.O. Box 14300
Washington, DC 20044-4300
14347992